

E-Filed On 5/2/081 **REPLY**2 **SUSAN WILLIAMS SCANN, ESQ.**3 **Nevada Bar No. 000776**4 **PAUL R. CONNAGHAN, ESQ.**5 **Nevada Bar No. 003229**6 **DEANER, DEANER, SCANN, MALAN & LARSEN**7 **720 South Fourth Street, Suite #300**8 **Las Vegas, Nevada 89101 (702) 382-6911**9 **ROBERT A RUSSELL, UNSER/CENTRALPARTNERS, LLP;**10 **RUSSELL/AD DEVELOPMENT GROUP; INTERSTATE COMMERCE CENTER, LLC;**11 **AD ALBUQUERQUE DEVELOPMENT, LLC**12  
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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**In re:  
USA COMMERCIAL MORTGAGE COMPANY

Debtor

Case No. BK-S-06-10725 LBR

Case No. BK-S-06-10726 LBR

Case No. BK-S-06-10727 LBR

Case No. BK-S-06-10728 LBR

In re:  
USA CAPITAL REALTY ADVISORS, LLC.

Debtor

Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under

Case No. BK-S-06-10725 LBR

In re:  
USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC.

Debtor

Date of Hearing: 5/8/08  
Time of Hearing: 10:30 a.m.In re:  
USA CAPITAL FIRST TRUST  
DEED FUND, LLC.

Debtor

Affects:

☐ USA Commercial Mortgage Company☒ USA Capital Diversified Trust Deed Fund, LLC☐ USA Capital First Trust Deed Fund, LLC☐ USA Securities, LLC☐ USA Realty Advisors, LLC☐ All DebtorsIn re:  
USA SECURITIES, LLC.

Debtor

**REPLY TO RESPONSE TO OBJECTION TO NOTICES OF 2004 EXAMINATIONS,  
MOTION TO QUASH SUBPOENAS AND OR FOR PROTECTIVE ORDER AND  
MOTION FOR LIMITATION OF RULE 2004 EXAMINATIONS**

COMES NOW, ROBERT A. RUSSELL ("Mr. Russell"), individually and as agent for  
UNSER/CENTRAL PARTNERS, LLP; RUSSELL/AD DEVELOPMENT GROUP; INTERSTATE

1 COMMERCE CENTER, LLC; AD ALBUQUERQUE DEVELOPMENT, LLC; by and through his/their  
2 attorney(s), SUSAN WILLIAMS SCANN, ESQ. of the law firm of DEANER, DEANER, SCANN,  
3 MALAN & LARSEN and SCOTT A. MCGATH, ESQ. of the law firm of OVERTURF MCGATH  
4 HULL & DOHERTY, PC, and hereby file this Reply to Response of USA Capital Diversified Trust  
5 Deed Fund, LLC ("Diversified") [Docket No. 6255] on this issue, as follows:

6 1. In its response to the motion to quash, Diversified acknowledges that the proper purpose  
7 of a Rule 2004 exam and corresponding document subpoenas is to "to assist the trustee in revealing the  
8 nature and extend of the estate, and to discover assets of the debtor which may have been intentionally  
9 or unintentionally concealed." *In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y.  
10 1996). (See, Diversified Response, at p.4).

11 2. As set forth both in Russell's Motion to Quash, and Diversified's Response, there is no  
12 question that the potential asset (or assets) of the estate in question is a promissory note and the  
13 corresponding guarantee. As this asset has been readily identified and discussed, it cannot be fairly said  
14 to have been in anyway concealed, either intentionally or unintentionally. While this asset may be a  
15 contingent asset, it certainly can be readily identified - not only by the trustee, but also by Diversified.  
16 Therefore, an appropriate rationale for the proposed Rule 2004 exams does not exist.

17 3. Diversified does not offer in its response, the specific factual basis for the proffered Rule  
18 2004 exam of Mr. Russell, let alone attempt to legitimize the breadth of the scope of its document  
19 subpoenas.

20 4. Instead of explaining the factual basis supporting the need for the 2004 exams Diversified  
21 recounts a history of discussions with Mr. Russell in which Mr. Russell had apparently agreed to produce  
22 certain documents to Diversified. The mere fact that Mr. Russell had voluntarily agreed to produce  
23 certain documents that he now realizes Diversified was not legally entitled to obtain, does not justify  
24 Diversified's efforts to use Rule 2004 to circumvent the procedural protections available under the Rules  
25 of Civil Procedure.

26 5. In fact, almost immediately after Russell filed his Motion to Quash, another Debtor in  
27 this case, USA Commercial Mortgage Company, instituted an adversary action against Mr. Russell. On  
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1 or about April 28, 2008, when counsel for Russell (Scott A. McGath, ESQ.) Spoke with Diversified's  
2 counsel (Marc A. Levinson, ESQ.) About whether Diversified would agree to a confidentiality order  
3 with respect to any information Mr. Russell might voluntarily produce, counsel for Diversified indicated  
4 that Diversified would not agree to such a confidentiality order. This highlights the need for the  
5 protection sought by Mr. Russell through this Motion and the need for confidentiality should this Court  
6 grant any part of Diversified's requests. (See Adversary No. 08-01119-LBR).

7  
8 DATED this 28 day of May, 2008

9 Respectfully Submitted,

10 DEANER, DEANER, SCANN,  
MALAN and LARSEN

11  
12 By:

  
13 SUSAN WILLIAMS SCANN, ESQ.

14 Nevada Bar No. 000776

15 720 South Fourth Street, Suite 300

16 Las Vegas, Nevada 89101

17 Attorneys for ROBERT A RUSSELL, individually and  
18 as agent for UNSER/CENTRAL PARTNERS, LLP;  
19 RUSSELL/AD DEVELOPMENT GROUP;  
20 INTERSTATE COMMERCE CENTER, LLC; AD  
21 ALBUQUERQUE DEVELOPMENT, LLC,  
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CERTIFICATE OF MAILING

I hereby certify that on the 2th day of May, 2008, I served the foregoing REPLY TO RESPONSE TO OBJECTION TO NOTICES OF 2004 EXAMINATIONS, MOTION TO QUASH SUBPOENAS AND OR FOR PROTECTIVE ORDER AND MOTION FOR LIMITATION OF RULE 2004 EXAMINATIONS by depositing copies of the same in the United States mails, postage prepaid, addressed to the following:

Robert Kinas, ESQ.  
Claire Y. Dossier, ESQ.  
Snell & Wilmer LLP  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Attorneys for USA Capital Diversified Trust  
Deed Fund, LLC

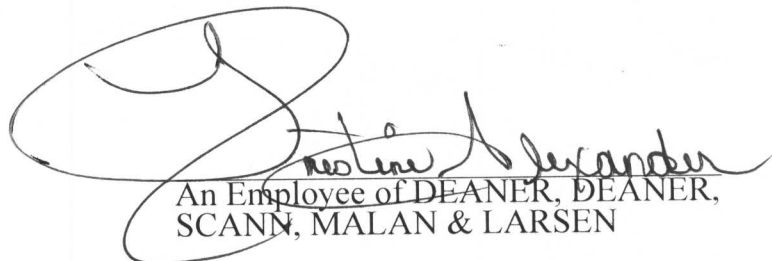
Marc A Levinson  
Jeffery D. Hermann  
Orrick, Herrington & Sutcliffe LLP  
400 Capital Mall, Suite 3000  
Sacramento, CA 95814-4497  
Attorneys for USA Capital Diversified Trust  
Deed Fund, LLC

Office of the U.S. Trustee  
600 Las Vegas Blvd., South,  
Ste. 4300  
Las Vegas, NV 89101

USA Commercial Mortgage  
4484 S. Pecos Road  
Las Vegas, NV 89121

Lenard Schwartz, ESQ.  
Schwartz & McPherson Law Firm  
2850 S. Jones Blvd., #1  
Las Vegas, NV 89146  
Attorney for Debtor

Annette W. Jarvis, ESQ.  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Ste., 1400  
P. O. Box 45385  
Salt Lake City, UT 84145-0385

  
An Employee of DEANER, DEANER,  
SCANN, MALAN & LARSEN